

October 28, 2011



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

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Donald E. Pilon

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October 27, 2011

Jonathan Wayne
Executive Director
State of Maine Commission on Governmental Ethics
133 State House Station
Augusta, Maine 04333-0135

Dear Jonathan,

Recently, it has come to my attention that Representative Linda Valentino of District #134 in Saco has opened a campaign office in my district. I find it unusual that a representative would open a constituent services office outside her district. I don't know of any other Maine state representative or state senator that has a constituent office let alone one in another legislator's district.

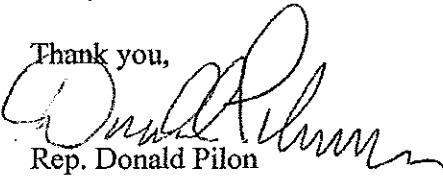
The timing of this constituent services office is suspect. It is two months before the 2012 primary campaign for the Senate seat in District #5. Why didn't she open this office at the beginning of the legislative session if she wanted to reach out to District #134 constituents?

Representative Valentino has indicated to you that she intends to use this office to provide services to her constituent's in House District #134. This office is miles from her district and her constituents. The demographics of Rep. Valentino's district show a mixture of suburban, rural and agricultural. District #133 (my district) is business, commercial, neighborhoods, shorefront communities and schools. From all appearances, this is a campaign office disguised as a constituent services office.

How is Representative Valentino paying for rent for this space and its expenses such as heat, AC, lights, cable/internet, phones, maintenance, trash removal and snowplowing? Please note, there is a sign in the window reading, "The Office of State Representative Linda Valentino District #134." Will you require her to remove it?

I'm registering a formal complaint against Representative Valentino and would like the Commission on Governmental Ethics and Election Practices to review the opening of this office in my district and its intended use.

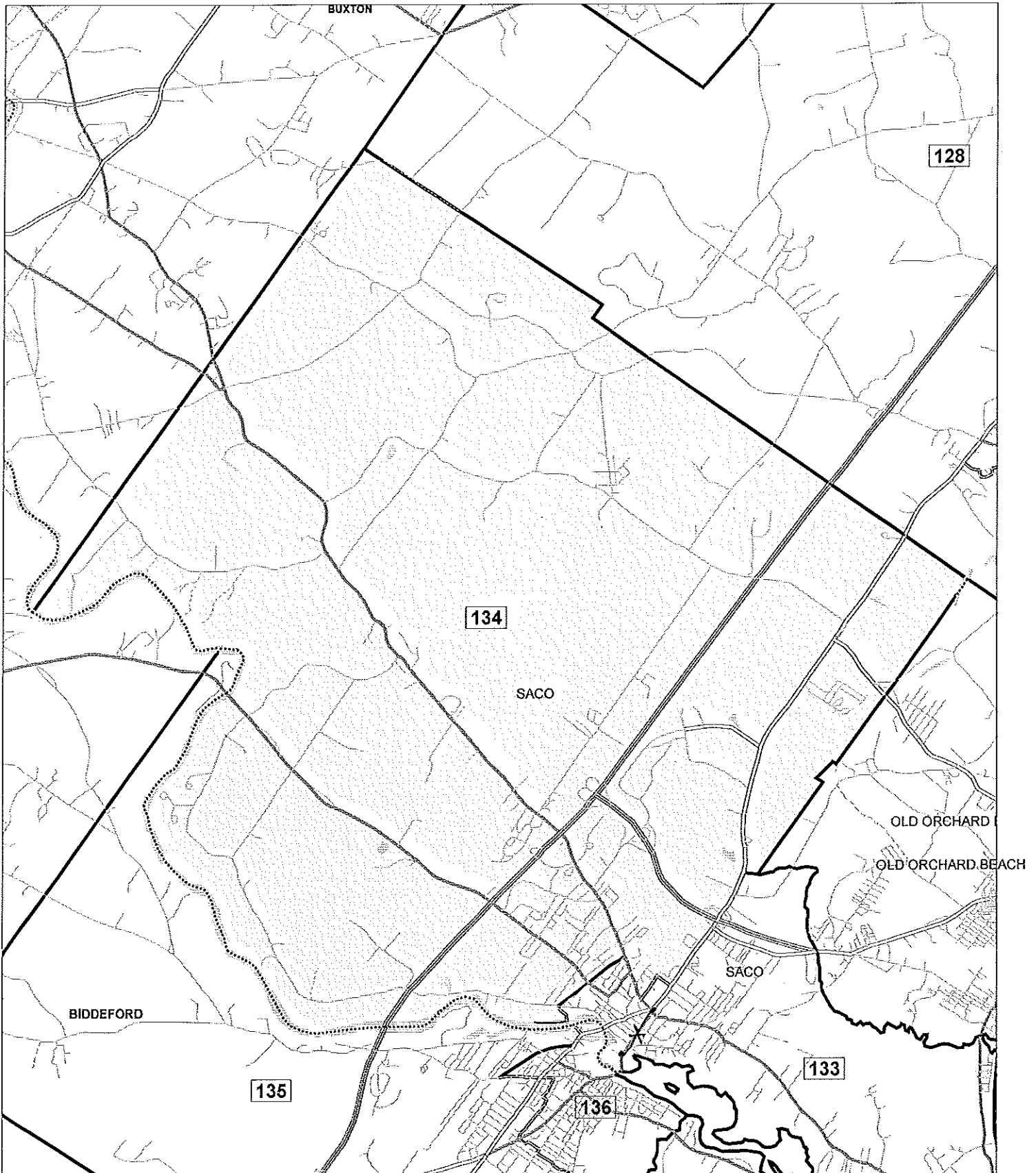
Thank you,


Rep. Donald Pilon

District 133 Part of Saco

State Representative District 134

State Representative District 134 is shaded area





STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 27, 2011

By E-Mail and Regular Mail

Hon. Linda M. Valentino
P.O. Box 1049
Saco, Maine 04072

Dear Rep. Valentino:

Thank you for the opportunity to provide further guidance concerning an office you have opened in downtown Saco. Around two weeks ago, you contacted the staff of the Ethics Commission concerning how to pay for a proposed office on Main Street in Saco. Currently, you represent District 134 in the Maine House of Representatives, and have registered as a candidate for State Senate District 6 in the 2012 elections. Two other individuals have registered as candidates seeking the Democratic nomination for Senate District 6.

You have told the Commission staff that you intend to use the office for providing services to your constituents in House District 134 and for your 2012 campaign. In addition, your daughter would conduct some personal work in the office and assist you with projects related to your legislative service. You asked how to pay for the office in a way that is legal, and that you would be willing to pay for the office from campaign funds, personal funds, or some combination.

The Ethics Commission does not have a policy on how Legislators should pay for assets or resources that have a dual campaign/legislative purpose, or a dual campaign/personal purpose. When "grey areas" such as this arise, the staff of the Ethics Commission provides advice on a case-by-case basis, applying current law and policies. This letter is intended to provide you with guidance on behalf of the Commission staff concerning options for paying for the office in compliance with campaign finance law. If a complaint were ever filed concerning this issue, the staff's advice would not be binding on the members of the Commission.

Legal Restrictions

Restrictions on Acceptance of Campaign Contributions

In Maine campaign finance law, the term "contribution" is defined as a gift of money or anything of value to a candidate "for the purpose of influencing the nomination or election of any person to state ... office" (21-A M.R.S.A. § 1012(2)(A)(1)) In general, if a

candidate spends their personal funds to promote their nomination or election, the candidate has made an in-kind contribution to his or her campaign. (21-A M.R.S.A. § 1015(5))

You have chosen to finance your 2012 campaign through the Maine Clean Election Act (MCEA) program. For purposes of this response, the Commission staff presumes that you will qualify for public campaign funding during March or April of 2012. Prior to qualifying for MCEA funding, you are permitted to receive and spend up to \$1,500 in seed money. (21-A M.R.S.A. §§ 1125(2) & (2-A)) Each individual contributor may give your 2012 campaign a cash or in-kind contribution of up to \$100. After qualifying to receive MCEA funds, you may not accept any cash or in-kind contributions. (21-A M.R.S.A. § 1125(6))

Acceptable Uses of MCEA Funds and Seed Money

MCEA funds may be spent only to promote the candidate's campaign and not for any other purpose. (21-A M.R.S.A. § 1125(6)) The Commission has issued guidelines on permissible expenditures of MCEA funds. MCEA funds may not be spent for personal purposes. You have expressed that you want to make sure that if you spend MCEA funds for the office, that would not be viewed by the Commission as an illegitimate purpose.

Candidates have much more flexibility in how they may spend seed money they have collected. There are no restrictions in law concerning how seed money may be spent.

Providing Office Space to a Campaign

Under Maine campaign finance law, "the use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider" is exempt from the definition of a campaign "contribution." (21-A M.R.S.A. § 1012(2)(B)(9)) Thus, a business, non-profit, or individual can donate office space to a campaign for free, provided that the provision of the space does not result in an additional cost to the provider.

Factual Information Presented

Based on the information you have provided me, my current understanding of the facts is as follows:

- The office will be used at various times to provide services to constituents, for campaigning, and for personal work projects of you or your family.
- You selected the location because it is in downtown Saco where residents of your district come for commercial and other purposes. The location of the office is in House District 133, which is represented by Donald E. Pilon. Rep. Pilon is also seeking the Democratic nomination for Senate District 6 in the 2012 elections.

- Presently, you are not conducting any campaign activities in the office. Through December 2011, you foresee using the office for modest or minimal campaign activities.
- You expect to meet with constituents in the office who may walk in off Main Street or who are responding to general invitations from you. You will also probably meet with constituents by appointment. You may hold regular office hours on Saturday mornings.
- As of yesterday, you had used the office for three days. This activity included discussions of state government with Saco residents, including one guardianship issue and the potential to hold a future meeting on workers compensation matters.
- Your daughter may do some personal work in the office. In addition, she will assist you with outreach to constituents and organizational tasks related to legislative service.

Advice by Commission Staff

The permissibility of whether a Legislator may rent or use an office to perform their legislative responsibilities is not within the jurisdiction of the Commission. The Commission has limited jurisdiction over a small number of ethics issues, such as conflicts of interest and acceptance of gifts. The Commission staff does not know of any law or policy placing any restrictions on whether a Legislator may open an office and where it may be located. You may wish to consult with authorities in the House of Representatives on these issues, if you have not already.

Because the office will be used for campaign purposes, the financing of the office is within the Commission's jurisdiction as the campaign finance agency for the State of Maine. As noted above, the Commission does not have a policy that covers payments made for dual (campaign/non-campaign) purposes.

The staff of the Commission advises that you pay for the office partially from your campaign funds and partially from your personal funds. We recommend that, for each upcoming month, you project what portion of your use of the office will be for campaign versus non-campaign purposes. For example, if you expect that 15% of your use of the office during a month will be for campaigning, we suggest paying for 15% of that month's rent with campaign funds, and the remaining 85% with personal funds. That way, your campaign will not be receiving an in-kind contribution from you. Once you qualify to receive MCEA funds, using this allocation will minimize the risk that MCEA funds will be used to finance activities other than your campaign. It may be that you will need to adjust the allocation between personal and campaign funds over time, as your use of the office changes.

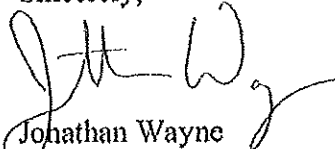
Even if you believe that you are conducting outreach to Saco residents in order to carry out your responsibilities as a State Representative, some members of the public or your campaign opponents may view your use of the office as campaigning. If you believe that the Main Street office will provide you with some campaign benefit this fall, you may wish to pay for some part of the rent with seed money to avoid any perception that your campaign has received an in-kind contribution. There are no limitations on how you may use seed money.

Because this matter might be the subject of a complaint before the Commission, we also recommend that you document your use of the office. We recommend that you keep a journal or calendar in which you or others record the day's campaign, legislative, or personal activities. This is not legally required, but it will assist you in defending the amount of campaign funds spent for the office and in verifying that the campaign has not received an in-kind contribution.

At his request, I am providing a copy of this letter to Rep. Donald E. Pilon. He has expressed some concerns to the Commission staff, because the office is located within his legislative district.

If you have any questions concerning this matter, please call me at 287-4179.

Sincerely,



Jonathan Wayne
Executive Director

cc: Hon. Donald E. Pilon (by e-mail)